

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

NOLAN ANDREWS,

Petitioner,

vs.

(AW) JURY, ACTING WARDEN;

Respondent.

4:21-CV-04003-RAL

OPINION AND ORDER GRANTING
RESPONDENT'S MOTION TO DISMISS

On January 6, 2021, Nolan Andrews, an inmate at the Yankton Federal Prison Camp in Yankton, South Dakota, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241. Doc. 1. This Court stayed the case until July 7, 2021, to allow Andrews to exhaust the administrative remedy process at the Bureau of Prisons (BOP). Doc. 15. This Court will now consider Respondent's motion to dismiss for lack of subject matter jurisdiction, for failure to state a claim, and for failure to exhaust. Doc. 10.

Andrews asks this Court to order the BOP to apply his First Step Act (FSA) earned time credits and credit him 330 days. Doc. 1 at 8. Under the FSA, time credits may be earned by eligible prisoners who successfully complete "evidence-based recidivism reduction programming" or "productive activities." 18 U.S.C. § 3632(d)(4)(A). The BOP has a phase-in period until January 15, 2022, to provide evidence-based recidivism programs and productive activities to *all* prisoners. *Id.* § 3621(h)(2) (emphasis added). In Holt v. Warden, this Court held that it cannot force the BOP to apply earned time credits toward prerelease custody before January 15, 2022. 2021 WL 1925503, at *5-6 (D.S.D. May 13, 2021). Thus, an inmate that seeks

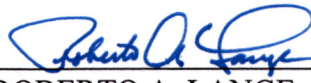
to have the Court compel the BOP to apply the credits before January 15, 2022, does not have standing and his/her petition must be dismissed for lack of subject matter jurisdiction. See id. Here, Andrews seeks to have the Court order the BOP to apply his earned time credits. See Doc. 1 at 8. At this time, the Court cannot compel the BOP to apply earned time credits.

Therefore, it is hereby

ORDERED that Respondent's motion to dismiss for lack of subject matter jurisdiction, Doc. 10, is granted.

DATED July 21st, 2021.

BY THE COURT:



ROBERTO A. LANGE
CHIEF JUDGE